THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 5437 AND 5438 OF 1996

05.09.2005

Between:

Jaddu Koteswara Rao & others.

..... PETITIONERS

AND

The Member Secretary, A.P.S.E.B.,
Vidyut Soudha, Khairatabad, Hyderabad-49 & others.

.....RESPONDENTS

W.P.No.5438 of 1996

Between

Pathuri Gandhi Rao & others.

..... PETITIONERS

AND

The Member Secretary, A.P.S.E.B.,
Vidyut Soudha, Khairatabad, Hyderabad-49 & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 5437 AND 5438 OF 1996

COMMON ORDER:

The eleven petitioners, in W.P.No.5437 of 1996, are the erstwhile Bill Collectors of the Andhra Pradesh State Electricity Board, who were re-designated as Revenue Cashiers with effect from 01.05.1982. The eighty five petitioners, in W.P.No.5438 of 1996, are also Bill Collectors, who were not re-designated as Revenue Cashiers with effect from 01.05.1982, but were re-designated, as such, subsequently.

While several contentions are raised with regard to their promotion and other service benefits, Sri P.Narasimha Rao, learned counsel for the petitioners, would submit that in view of the fact that all the petitioners have retired from

service, the relief as sought for in the writ petition is now restricted only to their entitlement for Special Grade Increments on their completing 10 years of service. Learned counsel would submit that since the Bill Collectors had merely been re-designated as Revenue Cashiers, the previous service of the petitioners, as Bill Collectors, ought to have been reckoned for the purpose of computation of the Special Grade Increments, to which they were entitled to on completion of 10 years service. Learned counsel would submit that treating the petitioners as fresh appointees in the post of Revenue Cashiers, ignoring their past service as Bill Collectors, is arbitrary and illegal, and that the respondents have discriminated against the petitioners inasmuch as Store Assistants, on their re-designation as Store Keepers, were given the benefit of their previous service as Store Assistants for computation of Special Grade Increments, which an employee is entitled to, on having served the Corporation for a period of 10 years. Learned counsel would submit that the petitioners repeated representations were of no avail as the respondents did not heed either to their representations or those submitted by the Unions in this regard.

The Andhra Pradesh State Electricity Board (hereinafter referred to as 'APSEB') vide Memo dated 01.05.1982, introduced a revised Billing procedure and allowed pay scales equal to that of a Lower Division Clerk to the erstwhile Bill Collectors on re-designating them as Revenue Cashiers. The erstwhile Sub-Inspector of Bill Collectors were re-designated as Sub-Inspector of Revenue Cashiers and given pay scales equivalent to that of an Upper Division Clerk. The pay scales of erstwhile Bill Collectors, prior to 01.05.1982, was less than that of a Lower Division Clerk and it is only on their being re-designated as Revenue Cashiers that they were conferred the benefit of pay scales equivalent to that of a Lower Division Clerk. It is only in the year 1996 that the respondents, vide proceedings in B.P.(P&G-Per)Ms.No.363, dated 22.06.1996, pursuant to an agreement entered into with the Unions on 05.03.1996, constituted a Committee to examine several issues relating to Revenue Cashiers/Lower Division Clerks including the issue of counting the service of Bill Collectors in the posts of Bill Collector/Lower Division Clerk category for the purpose of extending the benefit of Special Grade Pay. It is stated that though the Committee had subsequently submitted its report, holding that such of those Bill Collectors, who were converted as Revenue Cashiers/Lower Division Clerks as on 01.05.1982 with 9 years and above service, could be

allowed not more than one year service to the extent required for the purpose of computing 10 years service for conferring Special Grade Pay subject to monetary benefit prospectively, the recommendations of the Committee have not yet been implemented.

It is contended that even in the Committee report this benefit has been restricted only to employees, who have put in 9 years of service as Bill Collectors, prior to 01.05.1982, and not to those, such as petitioners herein, and that there is no rationale in restricting this benefit only to employees who have put in 9 years of service and in not extending the benefit to other Bill Collectors also.

It is not in dispute that Constitution of the Committee, vide B.P.(P&G-Per) Ms.No.363, dated 22.06.1996, and its report are all events, which took place subsequent to filing of the writ petition. The grievance of the petitioners, in these writ petitions, is independent of and is not based on B.P.(P&G-Per) Ms.No.363, dated 22.06.1996, or on the recommendations of the Committee constituted pursuant thereto. The action of the respondents in not extending the benefit of Special Grade Increments and in not reckoning the previous service of the petitioners, who worked as Bill Collectors, is contended as being illegal, arbitrary and in violation of principles of natural justice.

A detailed counter affidavit is filed by the respondents wherein reference is made to the fact that the petitioners were re-designated as Revenue Cashiers vide memo dated 01.05.1982 of the APSEB, that a Committee was constituted to examine these aspects and that it had submitted its recommendations.

It is admitted, by the learned counsel for the petitioners, that the petitioners herein were all eligible, for being given the benefit of Special Grade Increments, on their completing 10 years of service as bill Collectors and Revenue Cashiers together, by 1983-84 itself. While they were all entitled for the said benefit in the year 1984 itself, they however, chose to approach this Court 12 years thereafter only in the year 1996. The explanation, for this inordinate delay in approaching this Court, is that the petitioners have been repeatedly submitting representations and knocking the doors of the respondent-Corporation and that in the absence of any third party rights having intervened, delay *per se* cannot be a bar for their invoking the extra jurisdiction

of this Court under Article 226 of the Constitution of India.

I am afraid, I cannot agree. The discretionary jurisdiction of this Court under Article 226 of the Constitution of India would not be exercised in favour of a person, who does not approach this Court with promptitude. In **Amrit Lal Vs. Collector of Central Excise Central Revenue**, the Supreme Court held that merely by filing repeated or delayed representations, petitioner cannot get over the obstacles, which delay in approaching the Court creates.

In **State of M.P. Vs. Nandlal Jaiswal**, the Supreme Court held thus:

> "Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction…."
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> "…..Of course, this rule of latches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the Court; ex hypothesis every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

Learned counsel would submit that it is well settled law that without exhausting the departmental remedies available, no person is entitled to

approach this Court. While exhaustion of alternate remedies is insisted upon, the jurisdiction of this Court is not barred merely on the ground that alternate remedies have not been exhausted. Be that as it may, employees who claim to have submitted repeated representations to the department for 12 years would not, normally, be entitled to invoke the extraordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India unless the delay in approaching this Court is explained satisfactorily. In the present case, except stating that they had submitted representations, no other reasons are forthcoming for the inordinate delay of 12 years in invoking the jurisdiction of this Court. The alternate remedies, (exhaustion of which is normally insisted upon, before the jurisdiction of the High Court under Article 226 of the Constitution of India is invoked) are in the nature of an appeal or a revision as prescribed in a statute. Submission of repeated representations to the employer is not one such and cannot be equated to the statutorily prescribed alternate remedies.

The inordinate delay of more than 12 years in approaching this Court disentitles the petitioners from the relief sought for in the writ petition. While the contention of Sri P.Narasimha Rao, learned counsel for the petitioners, that no third party rights have intervened is no doubt true, that by itself, would not entitle the petitioners to the relief sought for in the writ petition. Ignoring the abnormal delay of 12 years, in approaching this Court, and granting the relief sought for in the writ petition would undoubtedly result in enormous financial liability being fastened on the Corporation.

One cannot, however, ignore the fact that the counter affidavit does not provide any acceptable justification for denial of Special Grade Increments to the erstwhile Bill Collectors on their re-designation as Revenue Cashiers and in not reckoning their past service in this regard. Except stating that Committee was constituted and that Committee has submitted its recommendations, the reasons for denial of this benefit to the petitioners, pursuant to the memo dated 01.05.1982, is not explained in the counter affidavit. I find considerable force in the contention of the learned counsel for petitioners, that the petitioners, all of whom have retired from service should be given the benefit of inclusion of their service as Bill Collectors, at least for the purpose of computation of their

pensionary benefits. There shall be a direction to the respondents to consider inclusion of their previous service as Bill Collectors for the limited purpose of recalculating the pensionary benefits of the petitioners herein. This exercise shall be completed, as expeditiously as possible, not later than a period of three months from the date of receipt of a copy of this order and the decision in this regard shall be communicated to the petitioners herein.

The writ petitions are accordingly disposed of. No order as to costs.

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05.09.2005

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